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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
Capital Area Immigrants' Rights)	
Coalition, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:19-cv-02117
)	
William Barr, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**DEFENDANTS' RESPONSE TO KIDS IN NEED OF DEFENSE'S MOTION FOR
LEAVE TO FILE AN AMICUS CURIAE BRIEF**

Defendants hereby file the following response to Kids in Need of Defense's ("KIND") Motion for Leave to File an Amicus Curiae Brief [ECF 19]. As KIND noted, the government does not object to KIND's filing of an amicus brief in this case. *See* ECF 19 at 3. However, the government objects to KIND's submission of new facts in an Administrative Procedure Act

(“APA”) record review case. “It is black-letter administrative law that in an [APA] case, a reviewing court should have before it neither more nor less information than did the agency when it made its decision.” *CTS Corp. v. EPA*, 759 F.3d 52, 64 (D.C. Cir. 2014) (internal quotation marks and citation omitted); *cf. Children’s Hosp. Ass’n of Texas v. Azar*, 300 F. Supp. 3d 190, 202 (D.D.C. 2018) (where summary judgment and preliminary injunction motions are consolidated, and thus the only issues relate to the merits of the claim, extra-record evidence relating to irreparable harm cannot be considered).

KIND’s proposed amicus brief relies heavily on the assertions of Lisa Frydman to supplement the administrative record about the conditions in Central America. *See* ECF 19-1 at 2-4. It is offered to provide “additional expertise and perspective on the unsuitability of expecting children transiting Mexico or Guatemala to seek protection in those countries.” *Id.* at 1. Given that this is a record review case, to the extent that KIND’s amicus brief attempts to provide extra-record evidence to challenge the rule’s substance, rather than to support Plaintiffs’ irreparable harm allegations, this Court should decline to consider it. *See, e.g., Walter O. Boswell Mem. Hosp. v. Heckler*, 749 F.2d 788, 793 (D.C. Cir. 1984) (noting that the D.C. Circuit “struck the portion of the *amicus* brief discussing” affidavits that were not part of the administrative record); *IMS, PC v. Alvarez*, 129 F.3d 618, 624 (D.C. Cir. 1997) (citing *Walter O. Boswell Mem. Hosp.* for that determination).

In the alternative, because the parties have agreed to stay the preliminary injunction briefing at this time, this Court need not rule on this matter at this time.

Respectfully submitted,

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Dated: July 29, 2019

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of for the District of Columbia by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

By: /s/ Erez Reuveni
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